

June 8, 2004



Estado Libre Asociado de Puerto Rico
Departamento de Salud
Oficina del Secretario

FEDERAL EXPRESS

Ms. Jane Kenny
Regional Administrator
US EPA Region 2
290 Broadway
New York, New York 10007-1866

Re: PRDOH Filter Backwash Recycling Rule Primacy Revision Application Package

Dear Ms. Kenny:

Enclosed is the Puerto Rico Department of Health's (PRDOH) Primacy Revision Application Package for approval of a program revision adopting new or revised EPA regulations pursuant Section 1413 of the Safe Drinking Water Act Amendments and 40 CFR Part 142, Subpart B.

This package covers the Filter Backwash Recycling Rule (FBRR). The PRDOH needs full implementation and enforcement authority to proceed with actions regarding the recycle practices provisions as established in this Rule.

To this effect, PRDOH requests approval of the complete and final revised Program. The Attorney General Statement submitted certifies that the laws and regulations adopted were duly implemented and are enforceable.

If you have any questions, please do not hesitate to contact Ms. Olga I Rivera, Public Water Supply Supervision Program Director at (787) 777-0150 or email: orivera@salud.gov.pr.

Sincerely,

Johnny Rullán, MD, FACPM

Enclosure: FBRR Primacy Application Package

Cc: Bruce Kiselica, Michael Lowy, EPA-NY
Carl Soderberg, EPA-CEPD
Alfredo Casta, Olga I. Rivera, PRDOH

Commonwealth of Puerto Rico
Department of Health
Public Water Supply Supervision Program



July 14, 2004

Bruce Kiselica, Chief
Public Water Supply Section
US Environmental Protection Agency
Region 2
290 Broadway
New York, New York 10007-1866

Re: PRDOH Primacy Application Minor Rules

Dear Mr. Kiselica:

The PR Department of Health (PRDOH) is requesting primacy for the following set of Minor Rules:

| Regulation | Promulgation | Final Primacy Application |
|--|-------------------|---------------------------|
| Consumer Confidence Report <ul style="list-style-type: none">• 5/4/00 Tech Corrections• 11/27/02 “• 12/09/02 “ | August 19, 1998 | August 19, 2000 |
| Revisions to IESWTR/Stage 1 <ul style="list-style-type: none">• 02/12/01 Tech. Correction | January 16, 2001 | January 16, 2003 |
| Arsenic Rule ¹ <ul style="list-style-type: none">• 03/25/03 Minor Clarification | January 22, 2001 | January 22, 2003 |
| Methods Update Final Rule | October 23, 2002 | October 23, 2004 |
| Approval of Additional Method for the Detection of Coliforms and E. Coli | February 13, 2004 | February 13, 2006 |
| Direct Final Rule - Analytical Method for Uranium | August 31, 2004 | August 31, 2006 |

¹ PN, CCR Language will change according to the language in each specific rule.

Page 2

Primacy Application Minor Rules

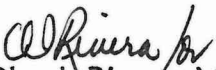
July 14, 2004

These set of Minor Rules do not have special primacy conditions that need to be addressed. To this extent, PRDOH intends to adopt the above rules as part of our primacy application package for the Filter Backwash Recycling Rule (FBRR).

EPA's staff provided PRDOH the necessary guidance to facilitate completion of the primacy application process by statutory deadlines. We appreciate your staff effort, assistance and collaboration throughout this process.

If you need additional information please do not hesitate to contact Eng. Zuleima Rodríguez at phone number (787) 777-0150.

Cordially,



Olga I. Rivera, MEH

Director

Public Water Supply Supervision Program

ZRH/ Primacy Application Minor Rules

Cc: Michael Lowy, EPA Region 2

Commonwealth of Puerto Rico
Department of Health
Public Water Supply Supervision Program



June 17, 2005

Bruce Kiselica
US Environmental Protection Agency
Region 2
290 Broadway
New York, New York 10007-1866

Re: PRDOH Bundle Primacy Application Package


The Puerto Rico Department of Health submitted the Environmental Protection Agency a bundle primacy package that included the following rules:

- Arsenic Rule (June 8, 2004)
- Filter Backwash Recycling Rule (June 8, 2004)
- Minor Rules (July 14, 2004)

We are requesting to include as part of this package a Methods Update promulgated in May 15, 2001 and make a correction to the Direct Final Rule – Analytical Method for Uranium promulgation and final primacy application dates to August 25, 2004 and August 25, 2006, respectively.

If you need additional information please do not hesitate to contact Eng. Zuleima Rodríguez at phone number (787) 777-0150.

Cordially,


Olga I. Rivera, MEH
Director
Public Water Supply Supervision Program

ZRH/
Bundle Primacy Package

Cc: Michael Lowy, EPA Region 2

PO BOX 70184 SAN JUAN, PUERTO RICO 00936-8184

Filter Backwash Recycling Rule Primacy Revision Application Package

July 2003
Revised June 2004

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| | A. SAO 2004-403-04 |

FBRR PRIVACY REVISION CHECKLIST

Section

FBRR State Primacy Revision Checklist

| Required Program Elements | | Revision to State Program ^ | EPA Findings/Comments |
|---------------------------|---|-----------------------------|-----------------------|
| §142.10 | Primacy Enforcement • Definition of Public Water System* | NOT REVISED | |
| §142.10(a) | Regulations No Less Stringent | " | |
| §142.10(b)(1) | Maintain Inventory | " | |
| §142.10(b)(2) | Sanitary Survey Program | " | |
| §142.10(b)(3) | Laboratory Certification Program | " | |
| §142.10(b)(4) | Laboratory Capability | " | |
| §142.10(b)(5) | Plan Review Program | " | |
| §142.10(b)(6)(i) | Authority to Apply Regulations | NOT REVISED | |
| §142.10(b)(6)(ii) | Authority to sue in courts of competent jurisdiction | " | |
| §142.10(b)(6)(iii) | Right of Entry | " | |
| §142.10(b)(6)(iv) | Authority to Require Records | " | |
| §142.10(b)(6)(v) | Authority to require public notification | " | |
| §142.10(b)(6)(vi) | Authority to assess civil and criminal penalties | " | |
| §142.10(b)(6)(vii) | Authority to require Consumer Confidence Reports (CCRs) | NOT REVISED | |
| §142.10(c) | Maintenance of Records | " | |
| §142.10(d) | Variance/Exemption Conditions (if applicable)** | " | |
| §142.10(e) | Emergency Plans | " | |
| §142.10(f) | Administrative Penalty Authority | " | |

*New requirement from the 1996 Amendments. Regulations published in the April 28, 1998 Federal Register.

** New regulations published in August 14, 1998 Federal Register.

^ Appropriate documentation of the adoption of these provisions are in AGO of August 21, 2000, IESWTR and D/DBPs primacy revision package.

TEXT OF THE STATE REGULATION

Section

CRESPO & RODRIGUEZ, INC.

A-6 Yale Street, Santa Ana
Piedras, Puerto Rico 00927

TAQUIGRAFOS DE RECORD

Tel. (787) 758-5930 / 763-8018
Fax (787) 767-8217

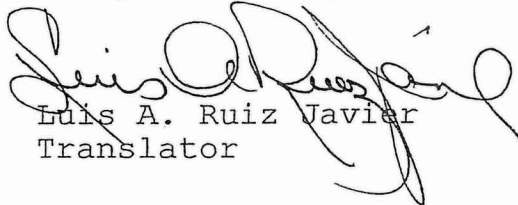


CERTIFICATE OF TRANSLATOR

I certify that the foregoing is a true and exact translation of the Spanish version of Article Number II - Drinking Water of the Drinking Water Section of the General Bylaws of Environmental Health, provided to Crespo & Rodríguez, Inc.

Witness my hand this 12th day of June, 2002, in San Juan, Puerto Rico.

Crespo & Rodríguez, Inc.


Luis A. Ruiz Javier
Translator

ARTICLE II: DRINKING WATER

Section 1.00 PUBLIC SYSTEMS OF DRINKING WATER

1.01 Requisites on Primary Standards.

1. All existing water systems and all those which will be established after the date of approval of these Regulations should comply with the requisites on primary contaminants.
2. The drinking water primary standards in Puerto Rico should be regulated in accordance with Title 40, Part 141 of the Federal Code Regulations, as amended.

1.02 Implementation of the Regulations on Primary Standards.

1. The implementations of the standards on drinking water primary contaminants in Puerto Rico will be subject to Title 40, Part 142 of the CFR, as amended.

1.03 Requisites on Secondary Standards.

1. The drinking water secondary contaminants will be regulated in accordance with Title 40, Part 143 of the CFR, as amended.

1.04 Revolving Fund.

1. Prior to commencement of operation, the Secretary is authorized to require that the drinking water systems, existing systems or new systems commencing to operate on or after October 1, 1999, be these comunal or noncomunal nontransient, to comply with Sections 1419 and 1420 of the Federal Safe Water Act, as amended; as well as with the provisions of Title 40 of the Federal Code Regulations applicable to the primacy of the Drinking Water Program of the Department; and with federal regulations of the Revolving Fund Program and its Sub-programs. The Secretary is also authorized to order

discontinuance of the operation of the drinking water systems which do not comply with these requisites.

2. The water systems to be built the Revolving Fund Program should comply with Sections 1452, 1419 and 1420 of the Federal Safe Drinking Water Act, as amended; also they should comply with the federal guides or provisions of the Federal Code Regulations, as applicable, as well as with the procedures established by the Department under said program.

1.05 Variations and Exemptions.

1. The Department may grant variations and exemptions from specified provisions in accordance with Title 40, Part 1414 of the CFR as provided by the Federal Safe Drinking Water Act of December 16, 1976, as amended.

1.06 Additional Requisites.

1. The provisions of Section 1 of this Article should in no way be construed as a limitation of the authority of the Secretary to establish additional requisites or more stringent standards to those provided on Federal Drinking Water Act of 1974, as it may be amended, and Federal Code Regulations, as may be amended, with the purpose of safeguarding public health.

Section 2.00 BOTTLED WATER

2.01 Requisites for Processing and Bottling.

1. All plants engaged in bottling water for human consumption in Puerto Rico should comply the water processing and bottling requisites provided on Title 21, Part 129 of the Federal Code Regulations, as amended.

2.02 Specific Requisites for Bottled Water.

1. Water bottled in Puerto Rico and all imported bottled water should comply with the quality standards and specific requisites for bottled water establish in Title 21, Part 165.110 of the CFR, as amended.

2.03 Labelling of Containers for Water and Water Products.

1. Water bottled in Puerto Rico and all bottled water imported from plants located outside of Puerto Rico should comply with the provisions of Title 2, Part 101 of the CFR, as amended.

2.04 Sound Manufacturing Practices.

1. The provisions for sound manufacturing practices contained in Title 21, Part 110 of the CFR will apply to the water bottling plants in Puerto Rico.

2.05 Bottling Plants Outside of Puerto Rico.

1. Water from all water bottling plants located outside of Puerto Rico, sold displayed, distributed, offered for sale or donation in Puerto Rico should comply with the water standards established in these Regulations.

2.06 Quality Control.

1. It will be the responsability of the operator to make sure that sample representative of the water bottled by the plant be analized by a certified laboratory, following the frequency and for the parameters specified on Title 21, Part 129, Section 129.80, Sub-part E of the CFR.

FBRR PRIVACY REVISION CROSSWALK

Section

PRIMACY REVISION CROSSWALK FOR THE FBRR

| FEDERAL REQUIREMENT | FEDERAL CITATION | STATE CITATION (DOCUMENT, TITLE, PAGE NUMBER, SECTION/PARAGRAPH) | DIFFERENT FROM FEDERAL REQUIREMENT? EXPLAIN ON SEPARATE SHEET. |
|---|------------------|--|--|
| SUBPART H – FILTRATION AND DISINFECTION | | | |
| §141.76 RECYCLE PROVISIONS | | | |
| Applicability. All subpart H systems that employ conventional filtration or direct filtration treatment and that recycle spent filter backwash water, thickener supernatant, or liquids from dewatering processes must meet the following requirements: | §141.76 (a) | ADOPTED BY REFERENCE | |
| Reporting. A system must notify the state in writing by December 8, 2003, if the system recycle spent filter backwash water, thickener supernatant, or liquids from dewatering processes. This notification must include, at a minimum: | §141.76 (b) | ADOPTED BY REFERENCE | |
| <ul style="list-style-type: none"> A plant schematic showing the origin of all flows which are recycled (including, but not limited to, spent filter backwash water, thickener supernatant, or liquids from dewatering processes), the hydraulic conveyance used to transport them, and the location where they are reintroduced back into the treatment plant. | §141.76 (b) (1) | ADOPTED BY REFERENCE | |
| <ul style="list-style-type: none"> Typical recycle flow in gallons per minute (gpm), the highest observed plant flow experienced in the previous year (gpm), and state-approved operating capacity for the plant where the state has made such determinations. | §141.76 (b) (2) | ADOPTED BY REFERENCE | |
| Treatment technique requirement. Any system that recycles spent filter backwash water, thickener supernatant, or liquids from dewatering processes must return these flows through the processes of a system's existing conventional or direct filtration system as defined in §141.2 or at an alternate location approved by the state by June 8, 2004. If capital improvements are required to modify the recycle location to meet this requirement, all capital improvements must be completed no later than June 8, 2006. | §141.76 (c) | ADOPTED BY REFERENCE | |

PRIMACY REVISION CROSSWALK FOR THE FBRR

| FEDERAL REQUIREMENT | FEDERAL CITATION | STATE CITATION (DOCUMENT, TITLE, PAGE NUMBER, SECTION/PARAGRAPH) | DIFFERENT FROM FEDERAL REQUIREMENT? EXPLAIN ON SEPARATE SHEET. |
|--|------------------|--|--|
| Recordkeeping. The system must collect and retain on file recycle flow information for review and evaluation by the state beginning June 8, 2004. | §141.76 (d) | ADOPTED BY REFERENCE | |
| <ul style="list-style-type: none"> Copy of the recycle notification and information submitted to the state under paragraph (b) of this section. | §141.76 (d) (1) | ADOPTED BY REFERENCE | |
| <ul style="list-style-type: none"> List of all recycle flows and the frequency with which they are returned. | §141.76 (d) (2) | ADOPTED BY REFERENCE | |
| <ul style="list-style-type: none"> Average and maximum backwash flow rate through the filters and the average and maximum duration of the filter backwash process in minutes. | §141.76 (d) (3) | ADOPTED BY REFERENCE | |
| <ul style="list-style-type: none"> Typical filter run length and a written summary of how filter run length is determined. | §141.76 (d) (4) | ADOPTED BY REFERENCE | |
| <ul style="list-style-type: none"> The type of treatment provided for the recycle flow. | §141.76 (d) (5) | ADOPTED BY REFERENCE | |
| <ul style="list-style-type: none"> Data on the physical dimensions of the equalization and/or treatment units, typical and maximum hydraulic loading rates, type of treatment chemicals used, average dose, frequency of use, and frequency at which solids are removed, if applicable. | §141.76 (d) (6) | ADOPTED BY REFERENCE | |
| APPENDIX A TO SUBPART Q OF PART 141 – NPDWR VIOLATIONS AND OTHER SITUATIONS REQUIRING PUBLIC NOTICE | | | |
| Filter Backwash recycling Rule violations: | I.A.8 | ADOPTED BY REFERENCE | |
| <p>MCL/MRDL/TT violations</p> <p>Tier of Public Notice Required Citation</p> <p>2 141.76</p> <p>Monitoring and testing procedure violations</p> <p>Tier of Public Notice Required Citation</p> <p>3 141.76</p> | | | |

PRIMACY REVISION CROSSWALK FOR THE FBRR

| FEDERAL REQUIREMENT | FEDERAL CITATION | STATE CITATION (DOCUMENT, TITLE, PAGE NUMBER, SECTION/PARAGRAPH) | DIFFERENT FROM FEDERAL REQUIREMENT? EXPLAIN ON SEPARATE SHEET. |
|--|--------------------------|--|--|
| APPENDIX B TO SUBPART Q OF PART 141 – STANDARD HEALTH EFFECTS LANGUAGE FOR PUBLIC NOTIFICATION | | | |
| <p>B. Standard Health Effects Language for Surface Water Treatment Rule (SWTR), Interim Enhanced Surface Water Treatment Rule (IESWTR) and Filter Backwash Recycling Rule (FBRR) violations:</p> <p>Contaminant MCLG MCL Standard Health Effects mg/L mg/L Language for PN</p> <p>7. Cryptosporidium (IESWTR/FBRR)</p> | B.7 | ADOPTED BY REFERENCE | |
| §142.14 RECORDS KEPT BY STATE | | | |
| Section 141.76 – Any decisions made to approve alternate recycle locations, require modifications to recycle return locations, or require modifications to recycle practices. | §142.14 (a)(4)(ii)(A)(9) | ADOPTED BY REFERENCE | |
| §142.16 SPECIAL PRIMACY REQUIREMENTS | | | |
| Section 141.76(d) of this chapter – States must have the proper rules and authority to use Sanitary Surveys, comprehensive performance evaluations (CPEs), other inspections, or other activities to evaluate recycle data maintained by systems under §141.76(d) of this chapter and require modifications to recycle practices. | §142.16(i)(1)(i) | SEE ADDRESSED SPECIAL REQUIREMENT | |

**FBR REPORTING AND RECORDKEEPING
CHECKLIST**

Section

FBRR Reporting and Recordkeeping Checklist

| Requirement | Are State policies consistent with Federal requirements? If not, please explain. |
|--|---|
| <p>Each State that has primary enforcement responsibility must keep records of decisions to:</p> <ul style="list-style-type: none">• Approve alternate recycle locations• Require modifications to recycle return locations• Require modifications to recycle practices <p>(§142.14(a)(4)(ii)(A)(9))</p> | <p>Adopted by Reference</p> |

FBR ADDRESS SPECIAL PRIVACY REQUIREMENTS

**COMMONWEALTH OF PUERTO RICO
DEPARTMENT OF HEALTH
PUBLIC WATER SUPPLY SUPERVISION PROGRAM**



Filter Backwash Recycling Rule § 146.16 Special Primacy Requirement

The following table contains the PRDOH Action/Compliance with the special primacy requirement of 40 CFR 142.16 for the implementation of the Filter Backwash Recycling Rule (FBRR). This requirement is addressed in the same order that it occur in the rule.

| Federal Requirement | Federal Citation | PRDOH Action/Compliance |
|--|------------------|---|
| States must have the proper rules and authority to use Sanitary Surveys, comprehensive performance evaluations (CPEs), other inspections, or other activities to evaluate recycle data maintained by systems under §141.76 of this chapter and require modifications to recycle practices. | §142.16 (i)1(i) | With administrative order SAO 2004-403-04, PRDOH has the authority to evaluate recycle data maintained by systems under §141.76 through Sanitary Surveys, comprehensive performance evaluations (CPEs), other periodic inspections, or other activities and require that systems modify their recycle location and make the appropriate modifications to recycle practices. |

**ATTORNEY GENERAL'S STATEMENT OF
ENFORCEABILITY**

Section



*The Attorney General
San Juan, Puerto Rico*

August 21, 2000

Ms. Jeanne M. Fox
Regional Administrator
Environmental Protection Agency
Region II
290 Broadway
New York, New York 10007-1866

Re: Puerto Rico's Primacy Revision Application-Safe Drinking Water

Dear Ms. Fox:

According to the requirements established in Title 40 of the Code of Federal Regulation ("CFR"), §142.12, the Puerto Rico Department of Health ("PRDOH") has to obtain approval of program revisions undertaken to adopt the National Primacy Safe Drinking Water Regulations as promulgated in 40 CFR Part 141 (the "NPSDWR") in order to demonstrate its primary enforcement responsibility ("Primacy"). In its efforts to evidence its Primacy, the PRDOH has requested that we issue an opinion regarding its legal authority to adopt the amendments to the Safe Drinking Water Act ("SDWA") introduced in 1996 by Public Law 104-182 (the "SDWA Amendments"). We must also opine as to whether the PRDOH has duly incorporated the SDWA Amendments and if the adoption of said amendments has been done by adequate and enforceable means.

PRDOH's Role as Local Agency with Primacy

Puerto Rico Act No. 5 of July 21, 1977, 12 L.P.R.A. §1551, et seq., also known as the "Act to Protect the Purity of Drinking Water of Puerto Rico," (the "APPDWPR") authorized the Secretary of the PRDOH to protect the purity of the drinking water in Puerto Rico. Pursuant to the authority delegated in the APPDWPR, the Secretary of the PRDOH should issue appropriate regulations fixing the maximum contaminant levels for drinking water according to the criteria established by the Administrator of the Environmental Protection Agency. Puerto Rico Act No. 193, approved by the Puerto Rico Legislature on December 26, 1997, reasserted the PRDOH's primary responsibility for protecting the purity of drinking water and public health, in general, in this jurisdiction.

Regulation No. 50 adopted by the PRDOH on June 20, 1983, also known as "Regulation to Protect the Purity of the Drinking Water of Puerto Rico," ("Regulation 50") and its subsequent amendments were adopted to comply with the delegated power and responsibilities of the PRDOH under the APPDWPR and for the PRDOH to adequately function as the state agency with Primacy. On February 4, 2000, in an effort to update and clarify its role as the agency with

Box 192 San Juan, Puerto Rico 00902 • Tel. (809) 721-7700 • Fax (809) 724-4770

Primacy in this jurisdiction, the PRDOH adopted Regulation No. 6090, also known as the "General Regulation of Environmental Health," ("PRDOH Regulation No. 6090") and derogated Regulation No. 50. For the sake of evidencing its unequivocal intent to comply with all SDWA requirements and with the SDWA Amendments, in particular, in Article II §1.02 of PRDOH Regulation No. 6090 the PRDOH adopted the totality of 40 CFR Part 141, as amended from time to time, by reference.

Requirements for a Showing of Primacy

We proceed to analyze the requirements established in the NPSDWR for a showing of Primacy and the local statutes and regulations that serve to grant Primacy to the PRDOH.

1. Under 40 CFR §142.10 (a), in order to establish its primary responsibility for public water systems, the PRDOH must adopt drinking water regulations no less stringent than those imposed by the NPSDWR.

In compliance with this requirement, the PRDOH Regulation No. 6090 establishes in its Article II §1.02 that primary standards for drinking water will be fixed and regulated according to 40 CFR Part 141, as amended. Article II §1.06 (1) of PRDOH Regulation No. 6090 goes even farther than the requirement established in 40 CFR § 142.10 in as much as, in order to protect public health, it grants to the Secretary of the PRDOH the authority to impose more stringent standards on drinking water safety than those established on the SDWA and the CFR.

2. In 40 CFR § 142.10 (b)(2) it is required that the PRDOH systematically perform sanitary surveys of public water systems, prioritizing on water systems violating primary drinking water regulations.

PRDOH Regulation No. 6090 adopted in its Article II §1.02, by reference, all requirements contained in 40 CFR Part 141, as it may be amended from time to time.

3. According to 40 CFR §142.10 (b)(6)(i), the PRDOH must have authority to apply its primary drinking water regulations to all public water systems in Puerto Rico. The PRDOH must also have statutory or regulatory enforcement authority adequate to assure compliance with locally adopted primary drinking water regulations, as necessary.

Section 3 of the APPDWPR, 12 L.P.R.A. §1551, et seq., authorizes the PRDOH to enforce drinking water regulations applicable to all water systems for human consumption.

In Chapter II, Article II §1.04 of the PRDOH Regulation No. 6090, the PRDOH is authorized (a) to require that all water systems in Puerto Rico comply with NPSDWR requirements regarding safe drinking water, and (b) to immediately close any facility violating said requirements.

4. 40 CFR §142.10 (b)(6)(ii) requires that the PRDOH be able to sue in courts of competent jurisdiction to enjoin any threatened or continuing violation of the State's primary drinking water regulations.

Section 5 of the APPDWPR, 12 L.P.R.A. §1551, et seq., authorizes the Secretary of the PRDOH to take any actions deemed necessary to protect a water system and its users' health. These actions include, but are not limited to, the commencement of a civil suit and the request of a permanent or temporary injunction.

5. Under 40 CFR §142.10 (b)(6)(iii), the PRDOH must have right of entry and inspection of public water systems, including the right to take water samples, whether or not it has evidence of violations of an applicable legal requirement.

Section 3 of the APPDWPR, 12 L.P.R.A. §1551, et seq., authorizes the Secretary of the PRDOH to conduct inspections and perform monitoring on water systems for human consumption.

Chapter I, Article IX § 2 of the PRDOH Regulation No. 6090 authorizes the inspection by the PRDOH of any drinking water system without previous notice.

Chapter I, Article IX § 5 of the PRDOH Regulation No. 6090 authorizes the Secretary of the PRDOH to take and analyze samples on water systems or any of its components to determine water quality and purity.

6. 40 CFR §142.10 (b)(6)(iv) requires that the PRDOH require suppliers of water to keep appropriate records and make appropriate reports to the State.

Article II §1.02 of the PRDOH Regulation No. 6090 adopted the 40 CFR Part 141, as amended, by reference.

Chapter I, Article IX § 5 of the PRDOH Regulation No. 6090 authorizes the Secretary of the PRDOH to require and examine any record from facilities or systems under its jurisdiction, as deemed necessary.

7. In order to comply with the requirements of 40 CFR §142.10 (b)(6)(v), the PRDOH must be authorized to require public water systems to give public notice according to requirements established in 40 CFR §§ 141.32 and 142.16 (a), respectively.

Section 7 of the APPDWPR, 12 L.P.R.A. §1551, et seq., requires a water system that is, in any way, in noncompliance with drinking water standards to immediately notify the nature and extent of the situation and its possible adverse health effects the local health office, the Secretary of the PRDOH and the media in the area served by the system. If the Secretary of the PRDOH so requires, said notice must be published in a daily newspaper of general circulation while the violation or variance exists, and must be included in water bills issued to system users. Article II §1.02 of the PRDOH Regulation No. 6090 adopted, by reference, the 40 CFR Part 141, as amended.

8. 40 CFR §142.10 (b)(6)(vi) requires that the PRDOH have authority to assess civil or criminal penalties for violation of the local primary drinking water regulations and public notification requirements, including the authority to assess daily penalties or multiple penalties when a violation continues.

Section 9 of the APPDWPR, 12 L.P.R.A. §1551, et seq., authorizes the Secretary of the PRDOH to impose civil penalties not greater than five thousand dollars (\$5,000.00) per day per violation of the APPDWPR, of regulations adopted by the PRDOH regarding drinking water, or of any administrative order issued relating to this matter.

Chapter III of the PRDOH Regulation No. 6090 authorizes the imposition of criminal penalties not greater than five thousand dollars (\$5,000.00) per day per violation of Section I of Regulation No. 6090.

Violation of public notice requirements would constitute a violation of both of the APPDWPR and PRDOH Regulation No. 6090.

9. Pursuant to the requirements in 40 CFR §142.10 (b)(6)(vii), the PRDOH must be authorized to require consumer confidence reports to all community water systems. Said reports must be prepared according to 40 CFR Part 141, subpart O.

Article II §1.02 of the PRDOH Regulation No. 6090 adopted, by reference, 40 CFR Part 141, as amended from time to time.

10. Under 40 CFR §142.10 (d)(1), if the PRDOH allows small system variances pursuant to Section 1415(e) of the SDWA, it must provide procedures no less stringent than the SDWA and Subpart K of this part.

Section 4 of the APPDWPR, 12 L.P.R.A. §1551, et seq., authorizes the Secretary of the PRDOH to grant variances and exemptions to drinking water regulations, provided they are authorized under conditions not less rigorous than variances or exemptions allowed under federal law.

11. As required pursuant to 40 CFR §142.10 (d)(2), if the PRDOH permits other type of variances, or exemptions, or both, from local primary drinking water regulations, it shall do so under conditions and in a manner no less stringent than the requirements of §§ 1415 and 1416 of the SDWA. In granting these variances, the State must adopt EPA Administrator's findings of best available technology, treatment techniques, or other means available as specified in Subpart G of this part.

Article II §1.02 of the PRDOH Regulation No. 6090 adopted 40 CFR Part 141, as amended, by reference, and Article II §1.05 of said regulation authorizes variances and exemptions only according to 40 CFR Part 141.4.

12. 40 CFR § 142.10(e) requires the adoption and implementation of an adequate plan for the provision of safe drinking water under emergency circumstances including, but not limited to, earthquakes, floods, hurricanes, and other natural disasters.

Section 6 of the APPDWPR, 12 L.P.R.A. §1551, et seq., directs the Secretary of the PRDOH to promulgate a plan to supply drinking water in emergency circumstances, and authorizes the Secretary of the PRDOH to take any measures deemed necessary to supply it. The plan has been adopted and is periodically revised to reflect any relevant change of

circumstances in the island or its infrastructure, and changes regarding agency officials to be contacted.

13. 40- CFR §142.10 (f)(1) requires that the PRDOH have authority for assessing administrative penalties of at least \$1,000 per day, per violation, for public water systems serving a population of more than 10,000 individuals. For public water systems serving a population of 10,000 or fewer individuals the penalties to be imposed by the PRDOH must be adequate to ensure compliance with local regulations. As long as these criteria are met, the maximum administrative penalty per violation to be assessed on a public water system may be determined by the PRDOH.

Section 9 of the APPDWPR, 12 L.P.R.A. §1551, et seq., authorizes the Secretary of the PRDOH to impose civil penalties not greater than five thousand dollars (\$5,000.00) per day, per violation of the APPDWPR, of regulations adopted by the PRDOH regarding drinking water, or of any administrative order issued relating to this matter.

Chapter III of the PRDOH Regulation No. 6090 authorizes the imposition of criminal penalties not greater than five thousand dollars (\$5,000.00) per day per violation of regulations contained on Section I of PRDOH Regulation No. 6090.


Administrative Order No. 2000-27500 issued on August 18, 2000, by the Secretary of the PRDOH specifically requires that any penalty imposed on public water systems serving a population of more than 10,000 individuals must be of at least \$1,000 per day per violation, and for public water systems serving a population of 10,000 or less individuals, penalties assessed must adequately deter future violations of applicable regulations.

14. The state agency must administer a Public Water Supply Supervision Program ("PWSS") pursuant to Section 1413 of the SDWA.

The PRDOH administers its PWSS pursuant to Section 1413 of the SDWA and the primary enforcement authority delegated to the PRDOH by the Administrator of the EPA, through communication dated March 1, 1980.

The preceding analysis of the authorities and functions delegated to the PRDOH in the previously reviewed statutes and regulations reveals, in our opinion, that the PRDOH is fully authorized by the APPDWPR to adopt and enforce the SDWA Amendments, that the referenced amendments have been lawfully adopted by the PRDOH and are enforceable through legally adequate means.

Respectfully,


Edda Serrano Blasini
Deputy Attorney General

COMMONWEALTH OF PUERTO RICO
DEPARTMENT OF JUSTICE

PO BOX 00192, SAN JUAN, PUERTO RICO 00902-0192

ADDRESS ALL COMMUNICATIONS TO THE SECRETARY

June 5, 2002

Hon. Johnny Rullán
Secretary
Department of Health
PO Box 70184
San Juan, Puerto Rico 00936-0184

Opinion No. 227-02-A
Translated

Dear Secretary Rullán:

This letter is in response to your request for an opinion as to the legal basis upon which the Department of Health of the Commonwealth of Puerto Rico (Department) may adopt, by reference, the amendments to the regulations administered by the Environmental Protection Agency (EPA).

On March 5, 2002, the Department of Health enacted Regulation No. 6090, *General Regulation for Environmental Health* (General Regulation), pursuant to the provisions of Act No. 5 of July 21, 1977, as amended, *Act to Protect the Purenness of Drinking Water of Puerto Rico*, 12 PR Laws Ann. §§ 1551 *et seq* (Act No. 5). The General Regulation established the standards to be met with regards to the drinking water in Puerto Rico. Towards that end, it provides for the adoption, by reference, of the amendments that may be approved to sections 141 to 143 of Title 40 of the Code of Federal Regulations (CFR) and the *Safe Drinking Water Act* (SDWA) without complying with the requirements established by Act No. 170 of August 12, 1988, as amended, *Uniform Administrative Procedure Act of the*

Commonwealth of Puerto Rico, 3 PR Laws Ann. §§ 2101 *et seq* (Administrative Act).

You indicate that the EPA questions the validity of adopting amendments by reference, without complying with the procedure of the Administrative Act. On August 21, 2000, then Acting Secretary of Justice, Edda Serrano Blasini, Esq., issued an opinion addressed to Mrs. Jeanne M. Fox, an official of the EPA, expressing that the Department had complied with the requirements established by the *National Primary Safe Drinking Water Regulation*, as stated in section 141 of the CFR. The opinion certified that such rules were validly adopted and incorporated into Puerto Rico's legal system. However, the opinion did not state the basis in law and jurisprudence that allowed the Department to adopt federal regulations by reference. This letter intends to fulfill such omission.

Act No. 5 was approved in order to regulate compliance with the standards for the purity of the drinking water, as well as the level of tolerance of contaminants. By virtue of section 3 of Act No. 5, the Secretary of Health (Secretary) is conferred the authority to enact and enforce the rules necessary to ensure the safety of drinking water in Puerto Rico, in accordance to the criteria established by the EPA. This includes the adoption of procedures for monitoring and inspection.

The regulations issued by the Secretary under Act No. 5 are applicable to all the systems that offer water for human consumption in Puerto Rico. Section 4 of Act No. 5 provides that the Secretary can establish variations and waivers to the approved regulations. This includes the power to adopt the conditions he deems necessary and desirable, as long as such conditions are not less strict than the ones established by the federal regulations under the SDWA.

In its provisions regarding the safety of drinking water, the General Regulation establishes that the adoption of primary and secondary contaminant standards of drinking water, as well as the operation of the water systems, are to be ruled by the applicable federal regulations in the CFR and the SDWA, as they may be amended.

The constitutionality of the delegation of power to a public agency by the Legislative Branch is determined by the boundaries prescribed with the delegation in question. In addition, the scope of the power granted to an agency must be examined in light of the methods of control present in the statutes applicable to the specific agency. D. Fernández, Derecho Administrativo y Ley Uniforme de Procedimientos Administrativos, Forum, 2^{da} Ed, 2001. Therefore, the analysis regarding the validity of the power an administrative action must begin with the boundaries limiting the power and the statutory context in which they appear.

The doctrine which prescribes the proper delegation of power is jurisprudential and is based on broad and general principles. Due to the complexity of the current social and economic problems faced by modern legislation, the doctrine in this field establishes that the delegation of power to administrative agencies is more efficient when done in terms of broad and general standards. Hilton Hotels v. Junta de Salario Mínimo, 74 DPR 670, 698 (1953). See also, American Power & Light v. Security Exchange Commission, 329 US 90 (1946).

The validity of an administrative agency's power to adopt regulations must be examined in accordance to the following standard: (1) the administrative action is authorized by law; (2) the administrative agency is invested with the power to issue regulations; (3) the regulations enacted fall within the boundaries of the delegated powers; (4) the rules were enacted in compliance with the procedural norms established by the organic act, and any other applicable statute, (5) the rules are not arbitrary or capricious. M & B.S., Inc. v. Departamento de Agricultura, 118 DPR 319 (1987). Consequently, the legislative delegation can be wide and flexible, as long as the regulations issued remain in harmony with the statutory provisions under which they are enacted. Ex Parte Irizarry, 66 DPR 672 (1946). Otherwise, the regulation faces a potential risk of illegal. Franco Dominicki v. Departamento de Educación, Opinion and Judgment of June 30, 1999, 99 JTS 108.

As stated above, Act No. 5 authorizes the Secretary to enact such regulations as he finds necessary, within the parameters for drinking water established by the EPA, as long as they are not less rigorous than the federal regulations. The General Regulation explicitly contains said statutory

limitation. The main guiding principle for the administrative action is precisely the federal rules, specifically sections 141 to 143 of the CFR. Therefore, the Regulation meets the standard mentioned above. The Secretary possesses legal power to enact those provisions as he deems necessary, without any additional requirement besides the delegation already given by the Legislative Branch.

Further, the adoption by reference of any amendment that may be enacted to the CFR and to the SDWA, implies that changes of a substantive nature will take place in the local regulation with every amendment to the federal rules. However, any intended amendment or modification to the local regulation must be done in compliance with the provisions of the Administrative Act in order to be valid.

The Administrative Act was approved with the purpose, among others, of creating a uniform body of minimum rules with which the agencies subject to said statute must comply whenever they intend to propose and adopt regulations. Said statute establishes the proceedings to be followed to implant regulations.

However, the *General Provisions* contained in the corresponding subchapter, 3 PR Laws Ann. § 2103, exempts the agencies from complying with the requirements of the Administrative Act whenever they determine it is necessary in order to avoid the denial of funds or services by the federal government of the United States of America. Said section acknowledges the discretionary power of the agencies to shape and conform their administrative procedures to those required by the applicable federal laws, without complying neither with the provisions of the Administrative Act or the *Administrative Procedure Act*, 5 USC §§ 551 *et seq.* This waiver from said statutes is complete, except for the requirements concerning the publication of the rules.

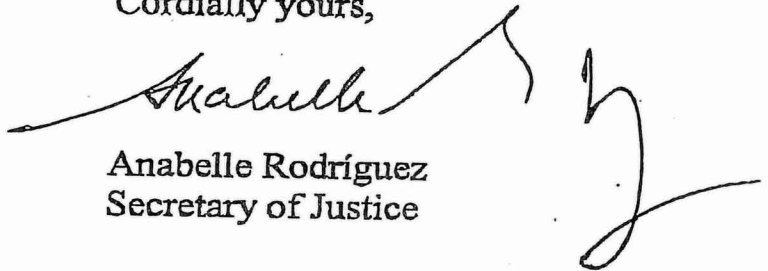
In accordance to the aforementioned jurisprudence, it is clearly evident that the Legislative Branch has empowered the Secretary to enact and enforce the regulations he deems necessary to monitor and supervise the drinking waters in Puerto Rico, according to the standards established by the Administrator of the EPA. As part of the duties imposed by Act No. 5, the

Secretary manages the Revolving Fund for Potable Waters in Puerto Rico, which receives grants assigned by the EPA and the federal government.

In adopting the amendments by reference, is not under the obligation to hold public hearings prior to the enactment of said rules, nor comply with any other provision of the Administrative Act. However, he shall comply with the requisite of disclosure and publication established in the Administrative Act, whenever the amendments to the federal regulations substantially affect the General Regulation.

Hoping that the aspects discussed above will be helpful, I remain,

Cordially yours,



Anabelle Rodríguez
Secretary of Justice

APPENDICES

• SAO 2004-403-04

Section

Commonwealth of Puerto Rico
Department of Health
Office of the Secretary



June 8, 2004

Public Water System
Owner and/or Operator

RE: State Administrative Order 2004-403-04
Order to establish requirements and procedures
to endorse new or existing public water systems
that projects to return specific recycle flows
within the system's treatment process.

To derogate State Administrative Order 1990-XIV-A-90

Public Water System Owner and/or Operator:

Act No. 5, approved on July 21, 1977, known as the Act to Protect the Purity of the Drinking Water in the Commonwealth of Puerto Rico, authorize the Secretary of Health to promulgate and enforce the necessary regulations to protect the purity of the drinking water supply in Puerto Rico and to protect the health of the people served by those systems as well. In May 1980, the Environmental Protection Agency (EPA) granted the Puerto Rico Department of Health (PRDOH) primacy for all existing national primary drinking water regulations in Puerto Rico.

On June 8, 2001, EPA promulgated the Filter Backwash Recycling Rule (FBRR), which requires public water systems (PWS) that recycle to return specific recycle flows through all processes of the system's existing conventional or direct filtration system or at an alternate location approved by the state.

The purpose of the FBRR is to improve public health protection by assessing and changing, where needed, recycle practices for improved contaminant control. Implementation of this Rule will result in reduction in risk of illness from microbial pathogens in drinking water, particularly *Cryptosporidium*.

The FBRR applies to all public water systems that:

- use surface water or ground water under the direct influence of surface water,
- practice conventional or direct filtration processes; and
- recycle spent filter backwash water, sludge thickener supernatant, or liquids from dewatering processes.

PO BOX 70184 SAN JUAN, PUERTO RICO 00936-8184

This State Administrative Order 2004-403-04 derogates expressively and in all its parts State Administrative Order 1990-XIV-A-90 approved by the Secretary of Health on May 23, 1991 to be in accordance with the promulgated Filter Backwash Recycling Rule requirements and procedures.

The Public Water Supply Supervision Program, part of the Environmental Health Program of the PR Department of Health, in its primary role to watch for the design, construction and operation of new or existing public water systems has established requirements and procedures to endorse those systems that projects to return specific recycle flows within the system's treatment process.

To this extent, PRDOH in its ministerial role to watch over the health of the Puerto Rican people, and in accordance with the provisions in Act No. 5 and the drinking water regulation, order and require that:

1. The public water system must submit to PRDOH a recycle notification. The PWS can use the Recycle Notification Form in Appendix B of the FBRR Implementation Guidance. A recycle notification include:
 - Plant schematic showing origin of recycle flows, how recycle flows are conveyed, and return location of recycle flows;
 - Typical recycle flows (gpm), highest observed plant flow experienced in the previous year (gpm), and design flow for the treatment plant (gpm); and
 - State-approved plant operating capacity (if applicable).
2. The PWS must collect and maintain the following information for review by PRDOH, which may, after evaluating the information, require a system to modify their recycle location or recycle practices:
 - Copy of the recycle notification and information submitted to PRDOH;
 - List of all recycle flows and the frequency with which they are returned;
 - Average and maximum backwash flow rate through the filters and the average and maximum duration of the filter backwash process in minutes;
 - Typical filter run length and written summary of how filter run length is determined (headloss, turbidity, time, etc.);
 - Type of treatment provided for recycle flows; and
 - Data on the physical dimensions of the equalization and/or treatment units, typical and maximum hydraulic loading rates, type of treatment chemicals used and average dose and frequency use, and frequency at which solids are removed, if applicable.

3. The PWS must submit one (1) copy of the preliminary construction plans and all documents regarding the recycle system proposed to be constructed for PRDOH's evaluation and comments prior receiving the corresponding construction endorsement.
4. The specific recycle flows (i.e.: spent filter backwash water, sludge thickener supernatant, or liquids from dewatering processes) must be returned to a location in that all processes of a system's conventional or direct filtration are employed and before any treatment process such as aeration, chemical dosage, and others that may apply or at an alternate location approved by PRDOH.
5. All recycle flows will receive a chlorine dosage prior the entrance to the sludge thickener.
6. The sludge treatment system will consist of the following:
 - A faucet to take samples of the recycle flow that will be returned.
 - A dewatering process that will allow flexibility in its functions and maintenance.
 - A holding tank with enough capacity to hold sufficient water sludge so that the routine and/or emergency filter backwash, sedimentation basins and dewatering processes are not affected.
 - A flow-meter to determine the flow rate that will be returned.
7. No more than twenty percent (20%) of the design flow capacity of the filter plant will be recycled. The recycle flow will not constitute an overload to the daily production of the treated water. The recycle process will be performed during the daily operational period of the plant.
8. Perform the following analyses to the recycle flow to be returned in addition to the daily routine analysis of the filter plant:
 - Turbidity, pH, daily flow rate and free chlorine. These analyses will be performed in the same frequency already established in the filter plant, but they will be performed at least once daily. The results will be recorded in the daily log and retained on file in the plant.

9. A public water system that had complied with Item No. 3, will be granted a provisional endorsement to return specific recycle flows after field inspection by PRDOH staff of the recycle system constructed. The provisional endorsement will also be subject to the results of the following sampling analyses:

- Bacteriology analysis (coliform) once daily for fifteen (15) consecutive days;
- One (1) chemical analysis (organic/inorganic) at the fifteen (15) day and;
- Physical quality (pH, turbidity, free chlorine) performed in the same frequency already established in the filter plant for fifteen (15) consecutive days.

This sampling will be performed at two locations: (1) the recycle flow that will be returned and (2) the entry-to-point of the distribution system with the recycle flow incorporated to filtration process as specified in Item No. 4. The PWS will stop recycling after the end of the sampling period.

The results of the sampling analyses will be submitted to PRDOH's for evaluation. PRDOH will have fifteen (15) working days to grant or deny the operation endorsement of the recycling process.

10. The PWS will submit evidence of the NPDES permit granted by the Environmental Protection Agency (EPA) or other concerned agencies. The PWS is responsible to keep this permit active in case that the plant has to dispose the water sludge. A Contingency Plan must be prepared to indicate how to dispose the water sludge by any of the following reasons:

- If it is demonstrated that the recycle flow affects the quality of the treated water.
- Malfunction of the sludge treatment process.
- Operational and maintenance deficiency in the sludge treatment process during an inspection performed by PRDOH or the system owner and/or operator.

11. The endorsement granted by the PRDOH to return specific recycle flows will not be effective by any of the following reasons:

- Non-compliance with any of the conditions established in the operation endorsement granted.

June 8, 2004

- If a system receives an Administrative Order regarding MCL violations for primary contaminants regulated by PRDOH and/or EPA.
- If it is determine that recycling process is a threat to public health.
- Any of the reasons specified in Item No. 10

Once the deficiencies are corrected PRDOH will approve the operation of the recycle system based on the results obtained after a field inspection.

12. The operation endorsement to return specific recycle flows will be renewed annually. The PWS must perform the sampling analyses determined as necessary by PRDOH to verify the quality of the water served by the recycle system. This sampling will be performed at two locations: (1) the recycle flow that will be returned and (2) the entry-to-point of the distribution system. The results must be submitted to PRDOH's for evaluation.

The results of the sampling analyses will be submitted to PRDOH's for evaluation. PRDOH will have fifteen (15) working days to grant or deny the operation endorsement of the recycling process.

All actions which willfully violate any of the requirements previously described shall be subject to other administrative and/or legal enforcement actions, as well as penalties in accordance with the applicable rules and laws in force.

This Order, under the power granted by the Secretary of Health on Section #5 of Act No. 5, will be in force immediately after its approval.

Cordially,



Johnny Rullán, MD, FACPM
Secretary of Health

Cc: Carl Soderberg, EPA-CEPD
Bruce Kiselica, EPA-NY
Alfredo Casta-Vélez, PRDOH
Olga I. Rivera, PRDOH
Legal Division, PRDOH